



Fox Rothschild LLP
ATTORNEYS AT LAW



JPW

625 Liberty Avenue, 29th Floor
Pittsburgh, PA 15222-3115
Tel 412.391.1334 Fax 412.391.6984
www.foxrothschild.com

Dennis M. Carleton
Direct Dial: (412) 394-5568
Email Address: dcarleton@foxrothschild.com

April 17, 2007

VIA Facsimile (571) 273-5629

Dennis Myint
U.S. Patent and Trademark Office

Re: Phone conference regarding U.S. Application No. 10/620,988 (Everett) - § 101 Rejection

Dear Mr. Myint:

In response to your Office Action dated 04/06/07 in the above-referenced application, I wish to discuss your response to our previous arguments and your claim rejections under 35 U.S.C. § 101. In your rejection on page 4, paragraph 5, of the Office Action you state that the **data structures are per say non-functional descriptive materials**. This is counter to Office Policy as set forth in MPEP§ 2106.01. You have classified the claimed invention as “a data structure”, which is defined in 2106.01 as “a physical or logical relationship among data elements designed to support specific data manipulation functions.” It also clearly states that data structures are to be considered functional descriptive material as opposed to non-functional descriptive material. Note that non-functional descriptive material includes music, literary works and data compilations. The data structures of the present invention clearly does not fall into one of these classes. 2106.01 further states that when functional descriptive material is recorded on some computer readable medium it becomes structurally and functionally interrelated to the medium and will be statutory. I believe your categorization of data structures as non-functional descriptive material is in error and find no support for your statement that data structures are per say non-functional descriptive material.

Please call to discuss. Thank you for your assistance.

Very truly yours,

Dennis M. Carleton